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MCD International, L.L.C. and United Steelworkers of America, AFL-CIO-CLC. Case 10-CA-30226

December 9, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
LIEBMAN

Upon a charge and an amended charge filed by the Union on May 23, 1997, and August 26, 1997, respectively, the General Counsel of the National Labor Relations Board issued a complaint on August 29, 1997, against MCD International, L.L.C., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On October 23, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 22, 1997, notified the Respondent that unless an answer were received by September 26, 1997, the allegations in the complaint shall be deemed to be admitted by the Respondent as true.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Alabama corporation, with an office and place of business in Anniston, Alabama, has been engaged in the business of manufacturing microwave ovens. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, sold and shipped from its Anniston, Alabama facility goods valued in excess of \$50,000 directly to customers located outside the State of Alabama. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About the latter part of March 1997, the Respondent, through its representative Richard Flemings, threatened employees with discharge for engaging in union activities.

In addition, about May 13, 1997, the Respondent, through Supervisor Mike Cobb, threatened employees with a loss of benefits and loss of job for supporting the Union.

Finally, about March 31, 1997, the Respondent discharged its employee Eddie Tippins, and, about April 15 and May 15, 1997, suspended and later discharged employee Jeff Pisacrita, because those employees engaged in union activities and to discourage employees from engaging in union activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition by discharging Eddie Tippins, and by suspending and discharging Jeff Pisacrita, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action de-

signed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Eddie Tippins and by suspending and discharging Jeff Pisacrita, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful suspension and discharges, and to notify Tippins and Pisacrita in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, MCD International, L.L.C., Anniston, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge, loss of benefits, or loss of job if they engaged in union activities or supported the Union.

(b) Suspending and discharging employees because of their union activities or to discourage employees from engaging in those activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Eddie Tippins and Jeff Pisacrita full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Eddie Tippins and Jeff Pisacrita whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharges of Eddie Tippins and Jeff Pisacrita, and within 3 days thereafter notify them in writing that this has been done and that the suspension

and discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Anniston, Alabama, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 13, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 9, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge, loss of benefits, and loss of job, if they engage in union activities or support the Union.

WE WILL NOT suspend or discharge employees because of their union activities or to discourage employees from engaging in those activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Eddie Tippins and Jeff Pisacrita full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Eddie Tippins and Jeff Pisacrita whole for any loss of earnings and other benefits resulting from their suspension or discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharges of Eddie Tippins and Jeff Pisacrita and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the suspension and discharges will not be used against them in any way.

MCD INTERNATIONAL, L.L.C.